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April 24, 1997

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BY HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication in CC Docket 96-98

Dear Mr. Caton:

Today, on behalf of WorldCom, Inc., I provided the attached letter, with enclosures, to Donald K. Stockdale, Jr., Deputy Chief of the Policy Division of the Common Carrier Bureau, in response to a request from the staff in connection with the shared transport issue in the referenced proceeding.

I have hereby submitted two copies of this notice and the enclosures for the referenced proceeding to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L. Oliver
Counsel for WorldCom, Inc.

Enclosure

cc: Donald K. Stockdale, Jr.
Kalpak Gude
Jake Jennings

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the petition of AT&T COMMUNICATIONS OF MICHIGAN, INC., for arbitration to establish an interconnection agreement with Ameritech Michigan.	Case No. U-11151
In the matter of the petition of AMERITECH MICHIGAN for arbitration to establish an interconnection agreement with AT&T Communications of Michigan, Inc.	Case No. U-11152

At the February 28, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

On August 1, 1996, AT&T Communications of Michigan, Inc., (AT&T) filed a petition for arbitration regarding the terms, conditions, and prices for interconnection and related arrangements with Ameritech Michigan pursuant to Section 252(b) of the federal Telecommunications Act of 1996 (the federal Act), 47 USC 252(b). The next day, Ameritech Michigan filed its petition seeking Commission arbitration of interconnection issues with AT&T. The cases were consolidated and processed in accordance with the Commission's July 16, 1996 order in Case No. U-11134.

In its November 26, 1996 order in these cases, the Commission approved an interconnection agreement adopted by the arbitration panel, with certain modifications. The Commission further required the parties to file an interconnection agreement consistent with the arbitration panel's conclusions as modified by the Commission, within 10 days of that order. To date, Ameritech Michigan and AT&T have filed five agreements, each of which contains disputed provisions. Additionally, only the most recently submitted agreement (filed January 29, 1997) carries the signatures of both parties.

The Commission Staff (Staff) initiated discussions with Ameritech Michigan and AT&T regarding the unresolved issues. On February 21, 1996, following a meeting with the parties, the Staff filed recommendations concerning the appropriate resolution of the remaining outstanding issues. On February 24, 1997, Ameritech Michigan and AT&T filed responses to the Staff's recommendations.

Discussion

The Staff points out that the latest agreement contains two disputed issues, neither of which was specifically addressed in the arbitration proceedings: (1) the difference, if any, between a port, as defined in the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., and the unbundled local switching element under the federal Act; and (2) the appropriate prices for the unbundled shared transport element.

a. Definition of Unbundled Local Switching Capability Element

The Staff recommends that the Commission determine that there is no difference between the definition of "port" in MCL 484.2102(x); MSA 22.1469(102)(x) and the Federal Communications Commission's (FCC) definition of "local switching capability" found in the FCC's February 7,

1997 order in CC Docket 97-1, ¶ 16, and codified in 47 CFR 51.319. Accordingly, the Staff recommends that the Commission delete the reference in the contract to a "Michigan port" and that the prices in Advice No. 2438B should be implemented in the unbundled local switching port-basic line port portion of the pricing schedule. Because the rates in Advice No. 2438B are currently under review in Case No. U-11280, the Staff states, Ameritech Michigan or AT&T may address any specific concerns that they may have in that proceeding.

Ameritech Michigan agrees that the rates specified in Advice No. 2438B for ports should be incorporated into the interconnection agreement for unbundled local switching. Ameritech Michigan also concurs that any reference to a Michigan port should be deleted. Although Ameritech Michigan states its view that the rates for unbundled local switching recommended by the Staff do not cover the cost of providing that service, the company states that it is willing to accept the Staff's recommendation on an interim basis, until the completion of Case No. U-11280.

However, Ameritech Michigan argues that the Commission should not require the parties to follow the modified rate schedule that was attached to the Staff's comments. The company states that, although Advice No. 2438B includes rates for both basic line and ground start line ports, the Staff's attachment strikes out those portions. Ameritech Michigan states that, consistent with the Staff's recommendation, those elements should be included in the pricing schedule. Additionally, Ameritech Michigan states, the items for which prices have not yet been determined should remain on the pricing schedule with the designation "TBD" (to be determined). It states that the parties have agreed on definitions and classifications for these services, and only need to determine prices, which will be accomplished in Case No. U-11280.

Ameritech Michigan asserts that, in keeping with the Staff's recommendation, and to avoid further confusion, the Commission should direct the parties to amend the switching section of the

pricing schedule attached to the January 29, 1997 signed version of the contract by the following: (1) delete "Line Side Port Without Vertical Features . . . $4 cents" on page five of the pricing schedule, (2) insert the rates established in Advice No. 2438B for "Basic Line Port, Per Port and Ground Start Line Port, Per Port" also on page 5, and (3) delete "Michigan Ports" on page 7.

AT&T argues that the port component that must be unbundled under Michigan law is not identical to the local switching capability element described in the federal rules. According to AT&T, its position is supported by Ameritech Michigan's submissions regarding definitions and costs included in the Michigan defined "port" in Cases Nos. U-11155 and U-11156. In addition to recognizing a distinction between Michigan and federal ports, AT&T asserts, Ameritech Michigan included local usage costs with the Michigan defined port, including all traffic sensitive set-up and duration related costs for a local call and certain costs for trunk facilities and tandem switching.

However, AT&T states that if the Commission adopts the Staff's position that a statutory port in Michigan is the same as the local switching capability element defined by the FCC and if it is also clear that AT&T is entitled to the full capability of the switch when it purchases the switching element, AT&T does not oppose the Staff's recommendation. AT&T also recognizes that the final, cost-based prices will be established in Case No. U-11280.

The Michigan Telecommunications Act defines "port" as follows:

> "Port" except for the loop, means the entirety of local exchange, including dial tone, a telephone number, switching software, local calling, and access to directory assistance, a white pages listing, operator services, and interexchange and intra-LATA toll carriers.

MCL 484.2102(x); MSA 22.1469(102)(x).

The FCC rules define "local switching capability element" as including:

> (A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;

(B) trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and

(C) all features, functions, and capabilities of the switch, which include, but are not limited to:

(1) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as telephone number, white page listing, and dial tone; and

(2) all other features that the switch is capable of providing, including, but not limited to custom calling, custom local area signaling service features, and centrex, as well as any technically feasible customized routing functions provided by the switch.

47 CFR 51.319(c)(1)(i).

The Commission finds that there is no functional difference between the port as defined by Michigan statute and the local switching capability element as defined in 47 CFR 51.319. Therefore, the pricing schedule should be amended to reflect the prices in Advice No. 2438B for the basic line port. Reference to Michigan ports should be deleted. As to the other markings on the schedule attached to the Staff's comments, the Commission finds that those items have not been submitted for arbitration. Thus, the parties are free to agree on those terms, subject to the Commission's approval of the contract submitted in compliance with this order.

b. Pricing of Shared Transmission Facilities

The Staff states that Ameritech Michigan proposes a flat rate for shared transmission facilities, based on its position that any sharing of these facilities would be at the option of and arranged between other providers, not including Ameritech Michigan. The Staff further states that Ameritech Michigan's proposed rates for these facilities do not change when traffic volume changes, which results in the competing carriers' bearing the risk of underutilized facilities.

On the other hand, the Staff notes that AT&T proposes that its traffic be carried on existing interoffice facilities of Ameritech Michigan and that the applicable rates be the minute-of-use rates included in Ameritech Michigan's switched transport tariff. Payments to Ameritech Michigan would then depend on the actual traffic carried on these facilities. If AT&T volumes justify dedicated facilities, the company could pursue that option.

To resolve this issue, the Staff recommends that the Commission adopt AT&T's proposed rates, charges, and prices from Ameritech Michigan's FCC Tariff No. 2, Sections 6.1.3, entitled "Rate Categories," and 6.9.1, entitled "Switched Transport" (including the current 37th Revised Page 207, 7th Revised Page 207.1, and 4th Revised Page 207.2 as of 2-21-97). The Staff states that Ameritech Michigan's proposal is inconsistent with the FCC's intention to maximize competing carriers' flexibility in combining new technologies with existing facilities. In the Staff's view, the FCC would not have drawn a distinction between interoffice facilities dedicated to a particular customer or carrier and those shared by more than one customer or carrier if it had intended that the same rates must apply to both. Finally, the Staff asserts, the usage-sensitive prices included in Ameritech Michigan's switched transport tariff are the appropriate alternative for the shared interoffice facilities that Ameritech Michigan is required to offer.

AT&T responds that the Staff's recommendations are consistent with the position that AT&T has maintained throughout the proceedings, accurately state the disagreement between the parties, and should be adopted by the Commission.

Ameritech Michigan responds that the Staff's position misapprehends the actual dispute between the parties. According to Ameritech Michigan, it has not declined to share transport facilities with competing carriers where capacity is available, nor does it insist that a flat rate must be imposed for transport facilities. In fact, Ameritech Michigan asserts, it will offer two pricing

options to requesting carriers that share these facilities. The first option is a flat rate circuit capacity charge that is based on the pro-rated capacity of the facility. Requesting carriers may order one circuit (DS-0) or multiple circuits. However, Ameritech Michigan argues, based on current network design and architecture, if 24 or more circuits are ordered a dedicated DS-1 facility should be provided.

Therefore, Ameritech Michigan argues, the Staff's recommendation should be modified to require that footnote 10 in Item V.E., Pricing Schedule 9, be changed to clarify that, at AT&T's option, it can share up to 24 DS-0s with Ameritech Michigan on a pro-rata basis based on the rates in Ameritech Michigan's FCC Tariff No. 2, Section 7.5.9. This pro-rata flat rate charge would apply to shared transport facilities between Ameritech Michigan's central offices, as well as to those facilities between an Ameritech Michigan central office and AT&T's wire center.

Additionally, Ameritech Michigan states that a minute-of-use pricing option exists for AT&T for shared transport facilities between two Ameritech Michigan central office switches where AT&T obtains unbundled switching network elements (trunk ports). Ameritech Michigan argues that the usage-based price option should include the two interoffice facilities rate elements in Ameritech Michigan's FCC Tariff No. 2, Section 6.9.1, tandem-switched termination per minute of use and tandem-switched facility per access minute per mile.[1] See Ameritech Michigan's FCC Tariff No. 2, 37th Revised Page 207. In Ameritech Michigan's view, the Commission should require that the usage sensitive option in Item V.E. be revised to permit AT&T to order up to 24 DS-0s per trunk port on a per-minute-of-use basis.

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[1]In a letter dated February 25, 1997, AT&T states that it appears that Ameritech Michigan's per minute pricing is consistent with AT&T's position on the rate elements that should be included, but that no limit should be placed on AT&T use of the unbundled transport element. However, AT&T complains that Ameritech Michigan has, in effect, raised a new issue by changing what it is offering to AT&T.

In Ameritech Michigan's view, rate elements related to switching must be excluded from the price for shared interoffice transmission facilities because the federal Act requires that these facilities be unbundled from switching and other services. Therefore, Ameritech Michigan argues, the Staff's recommendation should be clarified to exclude any switching related rate elements from the price for shared transmission facilities.[2] According to Ameritech Michigan, its position is consistent with the requirements of Section 271 of the federal Act, 47 USC 271, as reflected in 47 CFR 51.319(d), which requires that interoffice transmission facilities be an unbundled network element and defines shared transmission facilities as those facilities between switches.

Ameritech Michigan further states that, consistent with FCC requirements, the interconnection agreement treats switching and interoffice transmission separately. On the other hand, Ameritech Michigan argues, AT&T's definition of "common transport" includes switching, which is not consistent with the FCC's requirements.

The Commission finds that Ameritech Michigan's modifications and new proposals should be rejected. There is nothing in the federal Act that supports limiting shared transport facilities to any particular number. Whether it makes economic sense to request a dedicated line rather than shared transport is a judgment that the competing carrier should be allowed to make.

As to the pricing, the Commission finds that the FCC's requirement that unbundled transport (without switching) be made available does not preclude a carrier from requesting switched transport. However, it is unclear whether the dispute on this issue has been accurately identified. According to AT&T's letter, the rate elements included in Ameritech Michigan's proposed per-

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[2]According to Ameritech Michigan, the rate elements that should be excluded are its FCC Tariff No. 2, 4th Revised Page 207.2 (tandem switching per access minute) and its FCC Tariff No. 2, 48th Revised Page 214 (bundled local switching).

minute-of-use pricing appear acceptable to AT&T. Those elements also appear to be consistent with the Staff's recommendations, except for the exclusion of the switching element. The Commission finds that the parties' agreement on pricing, if any, should be implemented. Otherwise, the Staff's recommendations on the pricing of shared or common transport should be adopted.

The Commission FINDS that

a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The Staff's recommendations to resolve the remaining disputed issues should be adopted as provided in this order.

THEREFORE, IT IS ORDERED that:

A. The recommendations submitted by the Commission Staff are adopted as provided in this order.

B. Within seven days of the date of this order, Ameritech Michigan and AT&T Communications of Michigan, Inc., shall submit a signed copy of the interconnection agreement that comports with the Commission's decisions in this order and the November 26, 1996 order in this case.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(SEAL)

I dissent, as discussed in my separate opinion.

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of February 28, 1997.

/s/ Dorothy Wideman
Its Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the petition of AT&T COMMUNICATIONS OF MICHIGAN, INC. for arbitration to establish an interconnection agreement with Ameritech Michigan.	Case No. U-11151
In the matter of the petition of AMERITECH MICHIGAN for arbitration to establish an interconnection agreement with AT&T Communications of Michigan, Inc.	Case No. U-11152

DISSENTING OPINION OF COMMISSIONER JOHN C. SHEA

(Submitted on February 28, 1997 concerning order issued on same date.)

I cannot join in the order signed by the majority today for the reasons I stated in my November 1, 1996 dissenting opinion in Case No. U-11138. Simply put, there has not been a proceeding under the only law that this Commission may implement, namely the Michigan Telecommunications Act (the "MTA"), to determine the rightness of the conclusions and mandates in the accompanying order.

The greatest failing of the pseudo-federal process adopted by the majority is the absolute lack of a record to help determine what elements should be in an interconnection agreement. The majority's decision that "there is no functional difference," Order at 5, between the statutory definition of "port" found in the MTA and the Federal Communications Commission rule defining "local switching capability element," id., has no articulated basis. The MTA definition is

self-contained and limited to the words there stated. The FCC rule provides that its definition "include[s], but [is] not limited to" the items set forth in the rule. On the most fundamental basis, therefore, the FCC definition may incorporate things not expressed which are not part of the MTA definition. It is nowhere made clear by what legal authority the majority has determined to interpret a definition promulgated by a Federal agency. Contrary to the majority's decision, all of these matters can and should be addressed under Michigan law. Since they were not, I respectfully dissent.

John C. Shea, Commissioner

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF AT&T COMMUNICATIONS OF INDIANA, INC. REQUESTING ARBITRATION OF INTERCONNECTION TERMS, CONDITIONS AND PRICES FROM GTE NORTH INCORPORATED AND CONTEL OF THE SOUTH, INC., D/B/A GTE SYSTEMS OF INDIANA, INC., IN THEIR RESPECTIVE SERVICE AREAS, PURSUANT TO §252(B) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996.	)	CAUSE NO. 40571-INT 02

DEC 12 1996

BY THE COMMISSION:
Mary Jo Huffman, Commissioner
Clayton C. Miller, Chief Administrative Law Judge

With the passage and subsequent Presidential approval of the Telecommunications Act of 1996 ("the Act" or "TA'96"),[1] Congress amended the Communications Act of 1934[2] to stimulate competition in the marketplace for telephone services.[3] On August 16, 1996, AT&T Communications of Indiana, Inc. ("AT&T") filed the instant petition pursuant to Section 252(b) seeking this Commission's arbitration of various terms of a contract by which it would interconnect its facilities and equipment with the local telephone network of GTE North Incorporated and Contel of the South, Inc. d/b/a GTE Systems of Indiana, Inc.

By docket entry dated August 28, 1996, the presiding Administrative Law Judge notified the parties that the Commission had retained Ms. Mary Hinrichs ("Arb. Hinrichs") to serve as an arbitration facilitator in this matter. Arb. Hinrichs conducted various arbitration sessions with the parties during September and October, and prepared a Final Report of the Arbitration

[1]Pub. L. No. 104-104 (1996).

[2]47 U.S.C. 151 *et seq.* The language creating new U.S. Code sections 251 through 261 is found in section 101 of TA'96. Unless otherwise indicated, however, citations to sections of the Act in the text of this Order refer to the sections added to the U.S. Code, rather than to the organizational divisions within TA'96 which contain those new sections.

[3]*See* H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 113 (1996).

Facilitator. Having considered the applicable state and federal law, the arguments presented, and the recommendations contained in the Arbitration Facilitator's Final Report, the Commission now finds as follows:

1. Jurisdiction

Section 251(c) of the Act requires Incumbent Local Exchange Carriers (ILECs) to negotiate the terms and conditions of agreements to interconnect their networks with the facilities and equipment of any telecommunications carrier requesting such interconnection, and to negotiate other types of agreements relating to the introduction of competition to the local telephone exchange market. Section 251(f)(1) contains a qualified exemption from the requirements of Section 251(c) for rural telephone companies.

GTE claims that one of its operating subsidiaries, Contel of the South, Inc., qualifies as a "rural telephone company." Based on this claim, GTE filed a Verified Motion for Partial Dismissal or, in the Alternative, Partial Suspension of the Petition on behalf of Contel of the South in mid-September.[4] Assuming arguendo that Contel of the South would qualify on its own as rural telephone company as defined in Section 153(37) of the Act, we nevertheless question whether Congress intended the rural exemption to extend to individual subsidiaries of larger telephone companies. After all, Contel of the South does business in Indiana along with GTE North Incorporated under one name. Although its Verified Motion omits reference, other than in the caption, to GTE North Incorporated, said Motion arrived with a cover letter on GTE Telephone Operations letterhead ("A part of GTE Corporation") reading, in part: "Enclosed are the original and thirteen (13) copies of the Verified Motion for Partial Dismissal or, in the Alternative, Partial Suspension of the Petition *by GTE North Incorporated* and Contel of the South, Inc., d/b/a GTE Systems of Indiana, Inc., to be filed in the above matters." (emphasis added). Because we find that Contel of the South, Inc. and GTE North Incorporated are doing business as one entity, we decline to consider whether, considered separately, Contel of the South, Inc. qualifies for the exemption for rural telephone companies contained in Section 251(f)(1) of the Act, and, as this was the only question presented in its Verified Motion, said Motion is, accordingly, **DENIED**. We consider Contel of the South, Inc., and GTE North Incorporated, collectively doing business as GTE Systems of Indiana, Inc. ("GTE"), to be an ILEC as defined in Section 251(h)(1) of the Act. AT&T is a telecommunications carrier as defined by Section 153(r)(49) and received authorization from this Commission in Cause No.

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[4] The Commission had established the policy that written materials submitted by the parties during the pendency of the arbitration would initially be date stamped "Received" and directed to Arb. Hinrichs. In consultation with the Chief Administrative Law Judge, Arb. Hinrichs would then determine if the issue raised in a party's submission required a determination beyond the scope of her authority, in which case she would direct that submission be date stamped "Filed" as a public document. GTE's Verified Motion, for example, was received from GTE on September 16th and filed by Arb. Hinrichs on September 17th.

40415 on September 5, 1996 to provide certain local telecommunications services in Indiana.

Section 252(b)(1) provides a twenty-six day window of time during the course of negotiations under Section 251 - from the 135th through the 160th day after a party first requests to interconnect - when either party to the negotiations may petition a State commission to arbitrate any open issues. In Indiana, ILECs are considered public utilities and, as such, are subject to regulation by this Commission.[5] Accordingly, for purposes of implementing TA'96 in Indiana, references to a "State commission" in that Act apply to this Commission.

On March 12, 1996, GTE received AT&T's request to commence interconnection negotiations; it timely filed the instant petition 157 days later. Accordingly, this Commission has jurisdiction both over the parties and the subject matter of this proceeding.

2. Notice and Public Participation

On August 21, 1996, this Commission issued an Amended Interim Procedural Order in Cause No. 39983, our generic investigation into the introduction of local telephone competition to Indiana. In that Order, we found, among other things, that participation in all arbitration proceedings before the Commission pursuant to TA'96 would be limited to the two entities negotiating the interconnection agreement. We noted that the FCC has adopted a rule, 47 C.F.R. 51.807(g), which similarly limits the parties to any arbitrations it might be called upon to conduct under TA'96. We further noted that, upon the conclusion of our arbitration, the negotiating parties are required to present their completed interconnection agreement to the Commission for our review, at which point the public, through the Office of the Utility Consumer Counselor, and other interested parties will be afforded the opportunity to provide the Commission with the benefit of their views on all aspects of the proposed agreement.

Pursuant to the August 28, 1996 docket entry, Arb. Hinrichs convened a meeting with the parties in the Commission's offices on September 3rd and established an arbitration schedule. Having limited the arbitration proceedings to the negotiating parties, no public notice of this or subsequently held arbitration sessions was due or provided.

3. The Commission's Arbitration

The AT&T Arbitration Petition noted that at the time of its filing on August 16, 1996, "despite hundreds of hours of negotiations, and apparent written and verbal agreements on some items, these discussions have failed to produce a final agreement on any item." Because all issues were unresolved and would need to be decided by the Commission, AT&T submitted as

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[5] I.C. § 8-1-2-1; *see also id.* § 8-1-2-88; *id.* ch. 8-1-2.6 ("Competition in the Provision of Telephone Services").

Exhibit A to the AT&T Arbitration Petition a complete proposed interconnection agreement, a revised version of which it submitted on September 20th (the "AT&T Proposed Agreement") and requested that the Commission adopt the AT&T Proposed Agreement in this arbitration proceeding as the interconnection agreement between the parties. GTE filed its Response on September 10th, in which it generally urged the Commission to "resolve the disputed issues in such a way as to promote competition, not the self-serving interests of a particular competitor." Each party submitted boxes of back-up documentation in support of its filings. We note, however, that there has been little, if any, reference to such documentation in the parties' subsequently filed proposed orders.

The parties continued to negotiate as the arbitration proceeded. To our dismay, these negotiations bore little fruit in the form of agreed upon contract terms. Additionally, as discussed below, Arb. Hinrichs' Report and our own review of the record in this arbitration strongly suggest to us a reluctance on the part of GTE to reach an interconnection agreement with AT&T, which reluctance repeatedly manifested itself in a failure to cooperate with the arbitration facilitator's requests for information.

Section 252(b)(4) of the Act provides, in part, that a state commission may require the parties to provide such additional information as is necessary for the resolution of unresolved issues. In addition to AT&T's Petition and GTE's Response, in the instant arbitration the Commission required:

- GTE to submit with its Response a proposed interconnection agreement (as previously noted, AT&T had included such a proposed agreement with its Petition);
- each party to respond to the other's proposed interconnection agreement, stating with specificity areas of agreement as well as areas of disagreement;
- each party to submit written direct and rebuttal testimony;
- each party to conduct cross-examination and recross before Arb. Hinrichs on the record;
- the parties to submit jointly one document that would be a Joint Proposed Interconnection Agreement setting forth all terms agreed upon, as well as each party's disputed proposed language where they did not agree; and
- each party to submit briefs in the form of a proposed order with findings;

All of the above was required as a means of examining the parties' respective positions, clarifying the unresolved issues, and ensuring that this Commission would be able to resolve unresolved issues by the federal statutory deadline.

Despite Arb. Hinrichs' repeated, unambiguous and, we find, reasonable requests for the parties to present their cases in accordance with the above, they failed to timely comply. Such recalcitrance, especially on the part of GTE, required extraordinary measures on the part of the arbitration facilitator and the staff of this Commission in order to ensure our compliance with the

federal mandate that we arbitrate all open issues in the parties' interconnection agreement by the Congressional deadline.

On October 1, 1996, Arb. Hinrichs requested that the parties combine their agreed upon language with their disputed proposed language into one Joint Proposed Interconnection Agreement, to be submitted not later than October 11th. We find this request for information from the parties, as well as the deadline, to have been reasonable, particularly given that the deadline was seven months after AT&T requested to interconnect with GTE. When it became apparent that the parties would not meet this deadline, Arb. Hinrichs called the parties in for a special meeting on October 7th. Based on the parties' representation at that meeting, Arb. Hinrichs concluded that the parties had a fundamental difference between them as to how to express an interconnection agreement in contractual language. Thus, while GTE and AT&T ostensibly agreed in principle on a number of issues, the parties had been incapable or unwilling to reduce to writing more than twenty or thirty percent of these issues.

Rather than work together on the requested Joint Proposed Interconnection Agreement, the parties had instead collaborated on the development of matrices of open and closed issues. Arb. Hinrichs gave GTE the opportunity at the October 7 meeting to suggest a different date for the deadline. Keeping a deadline of October 11 was important because the Joint Proposed Interconnection Agreement was intended to serve as the vehicle for the parties' arguments in their respective Proposed Orders, which were due October 15th. Arbitrator Hinrichs' report to this Commission was due on October 29th. In response, GTE's negotiator, John Peterson, noted that the October 11th deadline would be a challenge, but that, "probably the real point is that up until we got into the arbitration process, there wasn't a real deadline, and you imposing a deadline, I think, is a very productive act on your part, and I would just, if I were you, let the parties go back and problem solve and see what we can come up with without giving further direction." (October 7, 1996 transcript at B-62)

Recognizing that AT&T cannot achieve entry into GTE's local telephone market with a matrix, but must have a contract delineating the terms of its interconnection with GTE, Arb. Hinrichs informed the parties at the October 7th meeting that if they could not meet the Commission's October 11th deadline for the Joint Proposed Interconnection Agreement, the Commission would, pursuant to Section 252(b)(4) of the Act, look to other sources of information for our resolution of the open issues in their interconnection agreement. Arb. Hinrichs went on the inform the parties that the Commission was prepared to consider as a source of relevant information the Interconnection Agreement proposed by AT&T and Ameritech Indiana in a separate arbitration proceeding then pending before the Commission.

According to Section 252(b)(4)(B), this Commission

> may require the petitioning party and the responding party to provide such information as may be necessary . . . to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State

commission. then the State commission may proceed on the basis of the best information available to it from whatever source derived.

Notwithstanding this statutory language. when the parties missed the October 11th deadline for their submission of a Joint Proposed Interconnection Agreement. GTE argued that this Commission's reliance on the outcome of the negotiations between AT&T and Ameritech Indiana. as well as on our arbitration of the open issues in that contract. would violate GTE's right to due process. would contradict established principles of arbitration. and would be inconsistent with TA'96. AT&T replied that GTE had received due process and further alleged that GTE had failed to negotiate in good faith. and that. after failing unreasonably to respond on a timely basis to this Commission's reasonable request for information. GTE's objection to any use of another negotiated/arbitrated interconnection agreement ignored the broad license expressed in Section 252(b)(4).

We find that GTE has failed to establish or show cause as to why this Commission should not require the parties to implement the provisions of the interconnection agreement in Cause No. 40571-INT-01 between AT&T and Ameritech Indiana ("the AT&T-Ameritech Agreement"). Specifically, we find that the parties missed the deadline for submission of the Joint Proposed Interconnection Agreement. We further find that the purported joint submission presented by GTE after the close of business on October 11th did not comply with our arbitration facilitator's request. because, among other reasons. it did not represent agreed upon language on all alleged "closed issues," and it included GTE's legend on the cover page which appears to negate areas of agreement if this Commission does not give GTE the prices GTE advocates. This problem of achieving joint contract language on areas of alleged agreement is not unique to GTE's negotiations with AT&T. We take administrative notice that in all three of the GTE arbitrations before this Commission, GTE has agreed to little, if any, contract language.

Section 252(b)(4)(A) of the Act provides that this Commission is to "limit its consideration of any petition . . . to the issues set forth in the petition and in the response . . . ." Section 252(b)(4)(C) then directs us to resolve each such issue "by imposing appropriate conditions as required to implement" Section 251(c) of TA'96. As noted above, AT&T's petition put the entire Interconnection Agreement before this commission. GTE's chief negotiator Donald McLeod testified that AT&T and GTE had agreed in principle to approximately sixty-four percent (64%) of the issues they negotiated, but had little. if any, agreed upon interconnection contract language. Without adequate guidance from the parties. we were unable to commit the resources necessary in such a short time to identify those fragments of consensual language buried in the volume of briefs and other filings.

We note that both parties expressed concern about their ability to jointly draft interconnection agreement language in time to submit an interconnection agreement for approval by this Commission pursuant to Section 252(e)(1) of the Act. We find that the issues subject to arbitration include the issues set forth in the GTE and AT&T Joint Matrix dated October 8, 1996 and received by this Commission on October 9, 1996. Pursuant to 47 U.S.C. § 252(b)(4)(B), we

further find that the circumstances set forth above support the use by this Commission of the Interconnection Agreement between AT&T and Ameritech Indiana in Cause No. 40571-INT-01, as negotiated by those parties and as previously arbitrated by this Commission ("AT&T and Ameritech Indiana Interconnection Agreement") as the best information available to this Commission to use as a basis for contract language in the instant arbitration.

4. Resolution of Open Issues

A. General

Based on the findings in the preceding sections, we find it is necessary to provide AT&T and GTE direction on contract language in order to ensure that there will be an interconnection agreement between these parties which complies with TA'96 and other applicable provisions of state and federal law.

When the parties ultimately submit their completed interconnection agreement to this Commission for approval, it should contain the contract language to which these parties have mutually agreed, and should otherwise reflect our determinations set forth in this order. In the event that these parties are unable to develop mutually agreed upon language by the deadline set forth in the ordering paragraphs below, the parties should submit the language contained in the Interconnection Agreement between AT&T and Ameritech Indiana, Cause No. 40571-INT-01 in whatever form approved by this Commission, with the sole exception that the prices in the agreement between GTE and AT&T should reflect our findings in the instant arbitration.

Given the paucity of GTE's citations to the record, and our finding to use the AT&T and Ameritech Interconnection Agreement pursuant to Section 252(b)(4)(B), and that the issues presented by AT&T and GTE in this cause have often already been addressed in the AT&T and Ameritech Indiana Interconnection Agreement as negotiated and arbitrated, we hereby adopt the decisions in the AT&T - Ameritech Indiana arbitration in Cause No 40571-INT-01 and the resulting Interconnection Agreement. Therefore, with the exception of the issues we find to be specific to this arbitration which are discussed below with accompanying findings, we find that the remaining issues presented by these parties shall be resolved in the manner in the AT&T and Ameritech Indiana Interconnection Agreement, as negotiated and arbitrated.

B. Costs Studies and Prices

On September 19, 1996, GTE filed a Motion to Deny Implementation of the FCC's Default Proxy Rates, in which it requested that the Commission reject the default proxy rates established by the FCC in its First Report and Order. GTE requested an opportunity to present evidence on state-specific pricing and cost related issues. On September 23, 1996, AT&T filed a Motion to Sever TELRIC Cost Studies for Consideration in a Separate Proceeding (the "Motion to Sever"), in which it requested that issues related to GTE's total element long-run incremental

cost ("TELRIC") studies be severed from this arbitration and given expedited consideration in a separate proceeding.

The FCC First Report and Order established, in part, national pricing rules that the FCC called Total Element Long Run Incremental Cost (TELRIC).[6] On September 27, 1996, the Eighth Circuit temporarily stayed the FCC First Report and Order. That same date, the FCC's issued its Order reconsidering portions of its First Report and Order, establishing a flat-rated default proxy range for the non-traffic sensitive costs of basic residential and business line ports associated with the unbundled local switching element. The FCC also clarified that because the First Report and Order concluded that the local switching element includes dedicated facilities, the requesting carrier is thereby effectively precluded from using unbundled switching to substitute for switched access services where the loop is used to provide both exchange access to the requesting carrier and local service by the ILEC.

By Docket Entry dated October 9, 1996, the presiding Administrative Law Judge (ALJ) granted the Motion to Sever, finding that cost data is an essential component of any interconnection agreement and that the methodology employed by an ILEC such as GTE in conducting its cost studies can substantially affect the ability of new local exchange service providers to compete. Given the very limited statutory time frames available for arbitrating unresolved issues related to an interconnection agreement, the presiding ALJ concluded that the necessary systematic, comprehensive examination of cost issues should be conducted in a separate proceeding. GTE filed a Petition for Reconsideration of the October 9th docket entry on October 29th, accompanied by a Brief in Support of said Petition. AT&T filed a Brief in Opposition to GTE's Petition for Reconsideration on November 12th.

A petition or motion for reconsideration is ordinarily directed to the person or entity responsible for the challenged action. While GTE's Petition seeks reconsideration of the presiding ALJ's docket entry, it apparently directed its petition not to the presiding ALJ, but to the Commission as a whole. GTE cited to no statutory basis for its authority to seek reconsideration, although we note that 170 IAC 1-1-17(f) provides for rulings of the presiding officer in a hearing to be appealed to the full Commission.[7] We chose to treat GTE's Petition for Reconsideration as an appeal to the full Commission, and now rule to uphold the presiding ALJ's granting of AT&T's Motion to Sever GTE's cost studies from the instant arbitration and his corresponding determination to utilize interim proxies for the prices herein. Accordingly, GTE's Petition for Reconsideration is **DENIED**. For purposes of the instant arbitration, we will use proxies. Such proxies will be superseded when we true-up GTE's prices based on the actual

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[6] *See* FCC First Report and Order ¶ 672; 47 C.F.R. §§ 51.501-51.515, 51.701-51.717.

[7] 170 IAC 1-1-20 contains our rules for rehearing after entry of an order, for further hearing before entry of an order, and for the introduction of additional evidence. Reconsideration under this rule - 170 IAC 1-1-20(d) - pertains only to actions pursuant to the Motor Carrier Act, and are therefore inapposite.

costs we subsequently determine in the separate proceeding referenced above.

On October 15, 1996 the Eighth Circuit dissolved its temporary stay over the entire FCC First Report and Order and replaced it with a stay of the FCC's national pricing rules contained in specified portions Appendix B - Final Rules of that Order:

* §§ 51.501 - 51.515(inclusive)[Pricing of Elements].

* §§ 51.601 - 51.611(inclusive)[resale].

* §§ 51.701 - 51.717(inclusive)[Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic], and

* the default proxy range for line ports used in the delivery of basic residential and business exchange services established in the FCC's Order on Reconsideration dated September 27, 1996.[8]

We note that these decisions occurred after the parties' revised proposed orders were received in this cause on September 24, 1996. All arguments presented by the parties on pricing thus referred to the entire FCC Order then in effect. Given the Eighth Circuit's recent permanent stay of the FCC's proxy rates, those rates are no longer mandatory. We find, however, for the State of Indiana, that the discussion and findings on default proxies contained in the FCC First Report and Order are a source of information as we set interim proxies that will promote competition in Indiana. We have no credible Indiana-specific evidence that would dispute this finding. Nor do we have any credible Indiana-specific evidence that convinces us that the finding of "irreparable harm" by the Eighth Circuit regarding the FCC's national pricing rules is in fact the case in Indiana. Additionally, there will be a true-up of any interim proxies coming out of the arbitration, as they will be superseded upon a final determination of permanent prices in our separate cost proceeding. For all of the reasons set forth above, we will look to the FCC Order for guidance in setting the interim proxies in this arbitration.

Sections 252(d)(1) and (d)(2) provide, in part, that prices are to be based on cost. An ILEC such as GTE has greater access than anyone else to cost information, at least with regard to its own services, and we find it is that ILEC's burden to prove its costs in accordance with the terms of TA'96. GTE did not persuade us that its proposed costs were "determined without reference to a rate-of-return or other rate-based proceeding" as required by Section 252(d)(1)(A)(i). We thus find that we cannot rely on GTE's proposed costs for purposes of this arbitration, and, as previously noted, we will make those determinations in a separate proceeding. We also find AT&T's proposed costs unreliable because they were based on calculations of the

[8] The Eighth Circuit's October 15th stay also included the "pick and choose rule" as set forth in footnote 3, *supra.*

operational costs of another ILEC (Ameritech) in another state (Michigan).

Knowing that this Commission may look to the AT&T - Ameritech Indiana Interconnection Agreement as a basis for our resolution of open issues pursuant to Section 252(b)(4)(B). GTE asked this Commission not to impose other parties' costs, but to base our order on GTE's costs. (Tr. Pg. H-180 to H-181). Although we recognize that GTE has a different cost structure than Ameritech Indiana, we find that the evidence GTE presented in this cause as to its costs was not credible. We do find, however, that data from the FCC, the National Exchange Carriers' Association (NECA), and even AT&T's own simplified cost studies for GTE suggest that, in general, GTE has a higher cost structure than Ameritech Indiana. Accordingly, we set the following interim proxies and find that they are consistent with the Act, and based on this Commission's knowledge of telephone service in Indiana, these proxies should promote competition in the local exchange market in Indiana:

- The parties are directed to use GTE's applicable access tariffs to calculate its prices unless otherwise noted below;

- For combinations of services, the price is the sum of their parts;

- Except as otherwise noted below, if there is no access tariff, then the parties are to look to prices in the AT&T - Ameritech Interconnection Agreement, and use the following formula. Based on this Commission's history with GTE and Ameritech we estimate GTE's cost structure is approximately twenty percent (20%) higher than Ameritech Indiana's. Therefore, where there is no access tariff, GTE and AT&T shall add 20% to any applicable price in the AT&T - Ameritech Indiana Interconnection Agreement and use the resulting price as the interim proxy in this proceeding. If the parties dispute the price for a service which has no such corollary in the AT&T - Ameritech Agreement, the dispute should be resolved using the alternative dispute resolution process also provided for in the AT&T - Ameritech Agreement as a service affecting dispute, which can be appealed to this Commission;

- For collocation, neither party provided credible collocation cost information. As noted above, we estimate GTE's cost structure is twenty percent (20%) higher than Ameritech Indiana's. Where there is no tariff, GTE and AT&T shall add 20% to any applicable price in the AT&T - Ameritech Indiana Interconnection Agreement and use the resulting price as the interim proxy in this proceeding.

- For poles, ducts, conduits, and rights-of-way, we recognize that the FCC regulations for section 224(e)(1) are not to be effective until February 8, 2001, and are to be phased in over five years after their effective date. 47 U.S.C. §224(e)(4). However, GTE should not have to wait five to ten years to be compensated by

AT&T retroactively. Because we have no credible evidence before us, the parties are directed to utilize the prices developed for AT&T's access to Ameritech Indiana's poles, ducts, conduits, and rights-of-way;

- For non-recurring charges, we find that the parties should use the lower of the corresponding prices developed in our arbitration of AT&T's interconnection agreement with Ameritech Indiana plus twenty percent, or GTE's retail rate.

- For wholesale prices, Congress set the applicable standard in Section 252(d)(3) of the Act. We note that GTE and AT&T have both filed wholesale tariffs with this Commission in Cause No. 39983. Additionally, we have severed the cost and price issues from this proceeding and deferred the final resolution of those issues to a separate proceeding. Therefore, in this proceeding, we will be setting an interim wholesale discount of seventeen percent (17%) that will be superseded when the Commission completes its work in the separate proceeding. We select this discount because we have no credible cost information before us, but we recognize the difference in the cost structures of Ameritech Indiana and GTE. We take administrative notice that this 17% proxy discount corresponds to the greater discount (21%) we established for Ameritech Indiana in Cause No. 40571-INT-01, which is consistent with our analysis of the difference in the cost structures of the two ILECs. We believe our determination is consistent with the Act, and will foster competition in Indiana.

C. Services to be Offered for Resale

We resolve most resale issues presented by the parties in a manner consistent with the AT&T - Ameritech Interconnection Agreement. We find, however, that the following issues require determinations specific to GTE:

"Below-cost services": Pursuant to Section 251(c)(4) of the Act, AT&T requested that GTE offer to AT&T residential and certain other telecommunications services at wholesale rates. However, GTE refused to offer for resale residential and certain other telecommunications services that it claimed are currently offered at retail below cost. GTE has made the policy decision that it will not offer residential and other "below-cost" services until rebalances its rates, and to be forced to resell before such rebalancing would be discriminatory. We note that GTE has not asked to have its rates rebalanced and that GTE's last rate case was concluded in 1988.

Section 251(c) of TA'96 specifically addresses the additional obligations of incumbent LECs, including, in subsection (4), resale:

> (4) RESALE.- The duty-
>
> (A) to offer for resale at wholesale rates any telecommunications service

> that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

GTE is thus under a statutory mandate to not impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services.

AT&T witness Jaworski testified that commercially viable resale opportunities are vital to the development of competition in the local exchange. He indicated that resale is the necessary first step in establishing such competition, and that facilities placement becomes more feasible as a large stable customer base is established. (Jaworski Direct, at pp. 6-7). Mr. Jaworski emphasized that competitive viability in the local exchange depends on the availability to resellers of a "comprehensive, functionally complete product offering." (Jaworski Direct, at p. 11). He further urged that all pricing options and packages that are available to GTE's retail customers also be made available to AT&T for resale to its retail customers so that incumbent LECs such as GTE not enjoy a competitive advantage by withholding product offerings from new market entrants. (Jaworski Direct, at pp. 19-24).

GTE's witness Meny, on the other hand, testified that GTE should not be required to provide, at wholesale rates, "below-cost" retail telecommunications services. We find it difficult to reconcile her testimony on cross-examination with the statutory requirement that GTE resell at wholesale rates all telecommunications services that it provides at retail to subscribers who are not telecommunications carriers. (Tr. H-134 and 135).

In our recent Resale Order on "bundled resale",[9] we observed that resale of telecommunications services was especially important for the opening of heretofore noncompetitive local telephone service markets.[10] Since our Resale Order, the FCC has adopted its implementing regulations on this subject.[11] While most of these FCC Rules are subject to the

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[9] Interim Order on Bundled Resale and Other Issues, Cause No. 39983, at p. 26 (I.U.R.C. July 1, 1996) ("Resale Order").

[10] The same point was stressed in paragraph 907 of the FCC Order: "Resale will be an important entry strategy for many new entrants, especially in the short term when they are building their own facilities. Further, in some areas and for some entrants, we expect that the resale option will remain an important entry strategy over the longer term."

[11] 47 C.F.R. §§ 51.601 - 51.617.